

BEFORE THE STATE TAX APPEAL BOARD  
OF THE STATE OF MONTANA

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MALCOLM W. BIRDSONG,	)	
	)	
Appellant,	)	DOCKET NO.: PT-2003-75
	)	
-vs-	)	
	)	
THE DEPARTMENT OF REVENUE	)	
OF THE STATE OF MONTANA,	)	CONCLUSIONS OF LAW,
	)	ORDER and OPPORTUNITY
Respondent.	)	<u>FOR JUDICIAL REVIEW</u>

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The above-entitled appeal was heard on March 11, 2004 in the City of Hamilton, in accordance with an order of the State Tax Appeal Board of the State of Montana (the Board). The notice of the hearing was given as required by law.

The Appellant, Malcolm Birdsong, did not appear for the scheduled hearing. Candace Jerke and Suzanne Knapp, appraisers with the Ravalli County Appraisal Office of the Department of Revenue (DOR) provided testimony in opposition to the appeal. DOR testimony was presented and DOR exhibits were received.

Mr. Birdsong is the appellant in this proceeding and, therefore, has the burden of proof. Based on the evidence and testimony, the Board affirms the market value of the subject property established by the Ravalli County Tax Appeal Board under jurisdiction of the Montana Code Annotated (MCA) and Administrative

Rules of Montana (ARM).

**STATEMENT OF THE ISSUE**

The issue before this Board in this appeal is the proper valuation of land and improvements in accordance with §15-7-103 and 15-8-111, MCA.

**FACTUAL BACKGROUND**

1. Due, proper and sufficient notice was given of this matter, the hearing hereon, and of the time and place of the hearing. All parties were afforded opportunity to present evidence, oral and documentary.

2. The property which is the subject of this appeal is described as follows:

Land only described as 1.5 acres in Section 27, Township 100 North, Range 200 West, County of Ravalli, State of Montana. (Geocode 1869-27-2-01-18)

3. For the 2003 tax year, the DOR appraised the subject land at a value of \$13,167.

4. The Appellant filed a timely appeal with the Ravalli County Tax Appeal Board on August 15, 2003, requesting a market value of \$3,000 for the land, stating:

*Valued too high; is not a building site due to size & high ground water: is historically & presently only irrigated pasture (grazing) & wet land (previously valued @ \$60) - should be ag for 2002.*

5. In its December 23, 2003 decision, the County Board reduced the

subject land value to \$7,917.

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6. The Appellant then appealed that decision to this Board on January 20, 2004, stating

*Valuation by DOR is based on speculation & hypothetical assumptions of future potential use scenarios rather than the actual present & like future situation. County board did not realistically address this. (Emphasis supplied.)*

#### **TAXPAYER'S CONTENTIONS**

The taxpayers did not appear at the scheduled hearing before this Board. In addition to the notice of hearing dated January 30, 2004, an attempt was made to contact them by telephone. Finding no one at home, the Board left a message on their answering machine on March 11, 2004 informing them of the time and place of the hearing.

#### **DOR CONTENTIONS**

The DOR presented Exhibit C (Birdsong Unbuildable Land Sales) and other supporting documentation in support of its appeal.

#### **BOARD DISCUSSION**

The Board accepts the DOR valuation of the subject land and improvements in the absence of an appearance by the Appellants.

#### **CONCLUSIONS OF LAW**

1. The State Tax Appeal Board has jurisdiction over this matter.  
**§15-2-301, MCA.**
2. It is true, as a general rule, that the appraisal of the Department of Revenue is presumed to be correct and that the

taxpayer must overcome this presumption. The Department of Revenue should, however, bear a certain burden of providing documented evidence to support its assessed values. (Western Airlines, Inc., v. Catherine Michunovich et al., 149 Mont. 347, 428 P.2d 3, (1967)).

3.     **§15-8-111 MCA.     Assessment - market value standard - exceptions.**   (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.
4.   The appeal of the appellant is hereby denied and the Decision of the Ravalli County Tax Appeal Board is affirmed.

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**ORDER**

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject land shall remain on the tax rolls of Ravalli County by the local Department of Revenue office at the 2003 tax year value of \$7,917 as determined by the Ravalli County Tax Appeal Board.

Dated this 15th day of March, 2004.

BY ORDER OF THE  
STATE TAX APPEAL BOARD

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GREGORY A. THORNQUIST, Chairman

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JERE ANN NELSON, Member

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JOE R. ROBERTS, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 15th day of March, 2004, the foregoing Order of the Board was served on the parties hereto by depositing a copy thereof in the U.S. Mails, postage prepaid, addressed to the parties as follows:

Merlin & Melinda Birdsong  
P.O. Box 745  
Lolo, Montana 59847

Office of Legal Affairs  
Department of Revenue  
Mitchell Building  
Helena, Montana 59620

Ravalli County Appraisal Office  
County Courthouse  
Hamilton, Montana 59840

Robert Frost  
Chairman  
Ravalli County Tax Appeal Board  
Sapphire Homes  
Hamilton, Montana 59840

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DONNA EUBANK  
Paralegal